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No. ~~15~~ 10 Original

# In the Supreme Court of the United States

OCTOBER TERM, ~~1958~~ 1958

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

STATE OF LOUISIANA

## OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT AGAINST THE STATE OF LOUISIANA, AND BRIEF IN SUPPORT OF OPPOSITION.

**FRED S. LeBLANC,**
*Attorney General,*
*State of Louisiana*
*2201 State Capitol*
*Baton Rouge, La.*

**JOHN L. MADDEN,**
*Assistant Attorney General,*
*State of Louisiana*
*2201 State Capitol*
*Baton Rouge, La.*

**BAILEY WALSH,**
*Special Assistant*
*Attorney General,*
*State of Louisiana*
*1346 Connecticut Ave., N.W.,*
*Washington, D. C.*

**W. SCOTT WILKINSON**
**L. H. PEREZ**
**GROVE STAFFORD**
*Of Counsel*

# INDEX


Page

Opposition to Motion for leave to file complaint against the State of Louisiana ..... 2

Brief in Support of Opposition to Motion for leave to file complaint against the State of Louisiana ..... 5

Argument in Brief:

I. District Courts of the United States have been granted concurrent jurisdiction by Congress in controversies between the Federal Government and a State ..... 5

II. This court may deny jurisdiction where another appropriate jurisdiction exists ..... 7

III. This case involves numerous questions of fact which should be determined through appellate procedure ..... 8

IV. Justice and convenience require trial in Federal Court in Louisiana ..... 36

V. Controversies should not be decided in piecemeal fashion ..... 38


# CITATIONS


Cases:

*Ableman* v. *Booth*, 21 How. 506, 16 L. ed. 169 ..... 34

*Ames* v. *Kansas*, 111 U.S. 449, 469-71, 28 L. ed. 482, 490 ..... 2, 7

*Arkansas* v. *Tennessee*, 310 U.S. 563, 570, 84 L. ed. 1362, 1366-1367 ..... 35

*Barney* v. *Keokuk*, 94 U.S. 324, 24 L. ed. 224 ..... 17

*Beal* v. *Missouri Pac. R. R. Co.*, 312 U.S. 45, 85 L. ed. 577 ..... 34

*Brown* v. *Grant*, 116 U.S. 207, 212, 29 L. ed. 598, 600 ..... 16

Cases—Continued


| | Page |
|---|---|
| *Brush* v. *Commissioner of Internal Revenue*, 300 U.S. 352, 81 L. ed. 691 | 34 |
| *Buffington* v. *Day*, 11 Wall. 113, 20 L. ed. 122 | 34 |
| *California* v. *Southern Pacific Ry. Co.*, 157 U.S. 229, 261, 39 L. ed. 683, 695 | 2, 8 |
| *Case* v. *Bowles*, 327 U.S. 92, 97 90 L. ed. 552, 557 | 7 |
| *Church* v. *Hubbart*, 2 Cranch 187, 234-5, 2 L. ed. 249, 265 | 21, 24 |
| *Clark* v. *Barnard*, 108 U.S. 436, 447, 448, 27 L. ed. 780 | 28 |
| *Colorado* v. *Symes*, 286 U.S. 510, 76 L. ed. 1253 | 34 |
| *Coyle* v. *Smith*, 221 U.S. 559, 566, 85 L. ed. 853, 857, 31 S. Ct. 688 | 26 |
| *Doe* v. *Beebe*, 13 How. 25, 14 L. ed. 35 | 17 |
| *Dodge* v. *Woolsey*, 18 How. 331, 15 L. ed. 401 | 34 |
| *Educational Films Corp.* v. *Ward*, 282 U.S. 379, 75 L. ed. 400 | 34 |
| *Georgia* v. *Chattanooga*, 264 U.S. 473, 68 L. ed. 796, 44 S. Ct. 369 | 8 |
| *Georgia* v. *Pennsylvania R. R. Co.*, 324 U.S. 439, 464-465, 89 L. ed. 1051, 1066-1067 | 2, 3, 8, 10 |
| *Goodtitle* v. *Kibbe*, 9 How. 471, 13 L. ed. 220 | 17 |
| *Guaranty Trust* v. *United States*, 304 U.S. 126, 134, 82 L. ed. 1224, 1229 | 28, 35 |
| *Handly* v. *Anthony*, 5 Wheat. 374, 383, 384, 5 L. ed. 113, 115 | 30 |
| *Indiana* v. *Kentucky*, 136 U.S. 479, 34 L. ed. 329, 332 | 30, 35 |
| *Jones* v. *Watts*, 142 F. 2d 575 | 28 |
| *Louisiana* v. *Mississippi*, 202 U.S. 1, 53, 50 L. ed. 913, 932 | 16, 35 |
| *Martin's Lessee* v. *Waddell*, 16 Pet. 367, 410 417, 10 L. ed. 997 | 27, 30 |
| *Maryland* v. *West Virginia*, 217 U.S. 1, 42, 54 L. ed. 645, 658 | 35 |

Cases—Continued

Page

*Massachusetts* v. *Missouri*, 308 U.S. 1, 19, 84 L. ed. 3, 10 ..... 2, 8, 10
*Massachusetts* v. *New York*, 271 U.S. 65, 95-96, 70 L. ed. 838, 848-851 ..... 27, 30
*McCulloch* v. *Maryland*, 4 Wheat. 316, 4 L. ed. 579 ..... 34
*New Mexico* v. *Texas*, 275 U.S. 279, 48 S. Ct. 126 ..... 30, 35
*New Orleans* v. *United States*, 10 Pet. 662, 737, 9 L. ed. 573, 602 ..... 17
*People of Porto Rico* v. *Ramos*, 232 U.S. 627, 58 L. ed. 763 ..... 28
*Phillips* v. *Payne*, 92 U.S. 130, 132, 23 L. ed. 649 ..... 35
*Pollard* v. *Hagan*, 3 How. 212, 11 L. ed. 566 ..... 17, 26
*Richardson* v. *Farjardo Sugar Co.*, 241 U.S. 44, 60 L. ed. 879 ..... 28
*Rhode Island* v. *Massachusetts*, 4 How. 591, 639, 11 L. ed. 1116, 1137 ..... 35
*State of California* v. *United States*, 91 Fed. Supp. 722 ..... 2, 7
*State of Minnesota* v. *United States*, 125 Fed. 2d 636 ..... 2, 7
*United States* v. *Bank of New York and Trust Co.*, 296 U.S. 463, 479, 80 L. ed. 331, 339 ..... 7
*United States* v. *California*, 297 U.S. 175, 187, 80 L. ed. 567, 574 ..... 7
*United States* v. *California*, 332 U.S. 19, 36 91 L. ed. 1889, 1898 ..... 26
*United States* v. *Chaves*, 159 U.S. 452, 464, 40 L. ed. 215, 220 ..... 35
*United States* v. *Montana* 134 Fed. 2d 194 ..... 2, 7
*United States* v. *National City Bank*, 83 Fed. 2d 236, 238, cert. den. 299 U.S. 563, 81 L. ed. 414 ..... 28
*United States* v. *Texas*, 162 U.S. 1, 40 L. ed. 867 ..... 21, 27, 30
*United States* v. *Texas*, 339 U.S. 707, 719-720, 94 L. ed. 1221, 1228 ..... 25

Cases—Continued


| | Page |
|---|---|
| *Van Brocklin* v. *Anderson*, 117 U.S. 151, 168, 29 L. ed. 845, 851 | 17 |
| *White* v. *Hart*, 13 Wall. 646, 20 L. ed. 685 | 34 |
| Statutes: | |
| 28 USC 1251 (b) (2), 62 Stat. 927 | 2, 6 |
| 28 USC 1331, 1345 | 2, 6 |
| Submerged Lands Act of May 22, 1953, 67 Stat. 29, 43 USC 1301, et seq. | 3, 14 |
| Title 28, Sec. 1345, USC | 6 |
| Title 28, Sec. 1251 (b) (2), USC | 6 |
| 2 Stat. 283, approved March 26, 1804 | 12 |
| 2 Stat. 701, 703, approved April 8, 1812 | 12, 15 |
| 2 Stat. 708, approved April 14, 1812 | 12, 15 |
| 8 Stat. 252 | 21 |
| 9 Stat. 922-23 | 23 |
| La. Act No. 18 of 1870 | 33 |
| La. Act No. 30 of 1912 | 33 |
| Act of August 7, 1953, 67 Stat. 462, 43 USC 1331 | 33 |
| La. Act No. 33 of 1954 | 39 |
| Act of Congress, Feb. 19, 1895, 28 Stat. 672, 33 USC 151 | 39 |
| Title 43, USC, Sec. 1301, 67 Stat. 29 | 39 |
| United States Constitution: | |
| Art. 3, Sec. 2 | 2, 6, 8 |
| Treaties: | |
| Treaty of Paris (1803) | 9, 11, 12, 13, 17, 21 |
| Treaty of St. Ildefonso (1800) | 12, 13 |
| Treaty of Fontainebleu (1762) | 12 |
| Treaty between United States and Spain, Feb. 22, 1819 | 21 |
| Treaty of Guadalupe Hidalgo (1848) | 22 |
| Gadsden Treaty, Dec. 30, 1853 | 23 |

Page

Other Authorities and References:
Appendix, Cong. Globe, 28th Cong., 1st Sess., 549 ..... 22
Louisiana Hist. Quarterly, Vol. 2, No. 2, April, 1919, pp. 139-140 ..... 12, 17
Committee Report, H.R. 4198 ..... 15
U. S. Code Congressional and Administrative News, 83rd Congress, 1st Sess. (1953), pp. 1387-1399 ..... 15
Journal of the Continental Congress, vols. 13-14 ..... 18
Letter of John Quincy Adams to Robert E. Livingston, Feb. 5, 1783 ..... 18
Riesenfeld "Protection of Coastal Fisheries" .. 18, 21
Convention between His Britannic Majesty and the King of Spain–Government Pamphlet No. 1799, Bodleian Library, Oxford, England ..... 19
Manuscript of Notarial Proclamation of La-Salle, Department of Marine Archives of Paris ..... 19
American State Papers, vol. IV, p. 468-70 ..... 20
Journal of House of Commons, 18 March, 1763, p. 589 ..... 14
Colombos, "International Law of the Sea," p. 103 ..... 21, 24
Speech by Senator Walker in United States Senate ..... 22
Congressional Globe, 33rd Cong. 1st Sess. 1568 23
United States Code Congressional and Administrative News, 83rd Cong.; 1st Sess. (1953), Vol. 2, p. 1516 ..... 24
H. J. Res. 225, 79th Congress, 2d Sess. (1946); 92 Cong. Record 9642, 10316 (1946); 92 Cong. Record 10660 (1946); S. 1545, 81st Cong.; H. R. 5992, 80th Cong., Rec. 5155 (1948) ..... 26

Other Authorities and References—Continued Page

United States Code Congressional and Administrative News, 83rd Cong.; 1st Sess. (1953), Vol. 2, pp. 1429-30 ..... 28

10 F. R. 12303, 4 U. S. Code Cong. Service, and accompanying order No. 9633, 3CFR, 1945 Supp. ..... 32

Complaint, Art. IV, *United States* v. *Louisiana*, No. 12 Original, October Term, 1949, United States Supreme Court ..... 33

Lauterpacht, Private Law Sources and Analogies of International Law (London, 1927), pp. 203-207 ..... 35

No. 15 Original

# In the Supreme Court of the United States

OCTOBER TERM, 1955

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UNITED STATES OF AMERICA, PLAINTIFF

*v.*

STATE OF LOUISIANA

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## OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT AGAINST THE STATE OF LOUISIANA.

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Now comes the State of Louisiana, through its Attorney General, and without waiving its right to object to the jurisdiction of this court, files this its opposition to Plaintiff's motion for leave to file its complaint against the State of Louisiana, and for cause of opposition shows:

1.

Congress has conferred on the District Courts of the United States concurrent jurisdiction with the Supreme Court of the United States in cases where a State is a party thereto.

U.S. Const. Art. III, Sec. 2, 28 USC 1251 (b) (2), 62 Stat 927, 28 USC 1331, 1345

*Ames* v. *Kansas*, 111 US 449, 469-71, 28 L.Ed. 482, 490

*State of Minn.* v. *U.S.*, 125 F.2d 636

*U.S.* v. *Montana*, 134 F.2d, 194

*State of California* v. *U.S.*, 91 F.Supp. 722.

2.

The exercise of original Jurisdiction by this Court is not mandatory and the Court may withhold such jurisdiction where another appropriate forum exists.

*Georgia* v. *Penn. R.R. Co.*, 324 US 439, 464-465, 89 L.Ed. 1051, 1066, 1067.

*Mass.* v. *Missouri*, 308 US 1, 19, 84 L.Ed. 3, 10.

*California* v. *So. Pac. Ry. Co.*, 157 US 229, 261, 39 L.Ed. 683, 695.

3.

Questions raised in this proposed proceeding regarding the boundaries of the State of Louisiana in the Gulf of Mexico involve numerous questions of fact concerning which this Court will not take judicial notice. Such matters of fact, and appropriate questions of law relating thereto, can best be determined through appellate procedure, and cannot be conveniently and fully presented in an original proceeding in this Court.

*Georgia* v. *Penn. R.R. Co.*, 324 US 439, 465, 89 L.Ed. 1051, 1067.

4.

A proper presentation of Louisiana's defenses and claims in this proposed cause will involve introduction in evidence of foreign treaties and documents, and of numerous maps, charts, and diagrams, records of the State Land Office, The Department of Conservation, and other State offices, which the Court will not judicially notice and the testimony of local witnesses. The transportation of such evidence and witnesses to Washington, D. C., would be a matter of great expense and inconvenience to the State of Louisiana and would be wholly impracticable and burdensome. In the interest of justice and public convenience the State of Louisiana is entitled to trial in a District Court of the United States having jurisdiction in the State of Louisiana and located therein.

*Georgia* v. *Penn R. R.*, supra

5.

Plaintiff seeks a trial of the dispute between the United States and the State of Louisiana in piecemeal fashion and a solution of the issues presented in the complaint would not dispose of the controversy between the parties. The complaint seeks a decree for the only purpose of determining the width of the marginal belt owned by Louisiana seaward in the Gulf of Mexico by virtue of the Submerged Lands Act of May 22, 1953, 67 Stat. 29, 43 USC 1301, et seq. Such a determination would

be utterly ineffectual without a determination of the location of Louisiana's coast line, or the landward boundary of the marginal belt, which determination is a basic issue in the controversy.

The State of Louisiana submits herewith its brief in support of this opposition. It respectfully urges and submits that this matter be fixed for oral argument; that this opposition be sustained and the relief prayed for by the plaintiff be denied.

**FRED S. LeBLANC,**
*Attorney General,*
*State of Louisiana*
*2201 State Capitol*
*Baton Rouge, La.*

**JOHN L. MADDEN,**
*Assistant Attorney General,*
*State of Louisiana*
*2201 State Capitol*
*Baton Rouge, La.*

**BAILEY WALSH,**
*Special Assistant*
*Attorney General,*
*State of Louisiana*
*1346 Connecticut Ave., N.W.,*
*Washington, D. C.*

**W. SCOTT WILKINSON**
**L. H. PEREZ**
**GROVE STAFFORD**
*Of Counsel*

February, 1956

No. 15 Original

# In the Supreme Court of the United States

OCTOBER TERM, 1955

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UNITED STATES OF AMERICA, PLAINTIFF

*v.*

STATE OF LOUISIANA

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## BRIEF IN SUPPORT OF OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT AGAINST THE STATE OF LOUISIANA

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Without waiving its right to object to the jurisdiction of this court, the State of Louisiana opposes plaintiff's motion for leave to file the proposed complaint in this Court for the reasons stated in the opposition which precedes this brief. Those reasons will be discussed hereinbelow.

I. DISTRICT COURTS OF THE UNITED STATES HAVE BEEN GRANTED CONCURRENT JURISDICTION BY CONGRESS IN CONTROVERSIES BETWEEN THE FEDERAL GOVERNMENT AND A STATE.

If it should be found that Congress has the power to authorize a suit by the United States against any of the member states of the Union,

then Congress has exercised such authority by providing that the District Courts shall have concurrent jurisdiction with the Supreme Court of the United States in such cases.

Article 3, Section 2 of the United States Constitution extends the judicial power to all cases arising under the Constitution, the laws of the United States, and treaties made under their authority. It confers upon the Supreme Court original, but not exclusive, jurisdiction to those cases in which a State shall be a party.

Section 1345 of Title 28 of the United States Code gives to the District Courts of the United States original jurisdiction in those cases where the United States is a plaintiff. This Section of the Judicial Code reads as follows:

> "§ 1345. *United States as plaintiff*
> Except as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress. June 25, 1948, c. 646, 622 stat. 933."

Section 1251 (b)(2) of Title 28 of the United States Code grants to this Court original, but not exclusive, jurisdiction of controversies between the United States and a state. This section of the Judicial Code reads:

"§ 1251. *Original jurisdiction*

(b) The Supreme Court shall have original but not exclusive jurisdiction of:

(2) All controversies between the United States and a State."

Louisiana does not admit that it can be sued by the United States and asserts that, in any event, it cannot be sued by the United States without its consent; but if so sued, with or without its consent, then the venue of such an action can be laid either in this court, or in the United States District Court for the Eastern District of Louisiana.

This Court has recognized the power of Congress to grant to the inferior Courts of the United States jurisdiction in cases where the Supreme Court has been vested by the Constitution with original jurisdiction.[1] This principle has also been approved in other cases decided by the Courts of Appeal and the District Courts of the United States.[2]

II. THIS COURT MAY DENY JURISDICTION WHERE ANOTHER APPROPRIATE FORUM EXISTS.

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[1] *Ames* v. *Kansas*, 111 US 449, 469, 28 L.Ed. 482, 490; *U. S.* v. *Bank of N. Y. & Trust Co.*, 296 US 463, 479, 80 L.Ed. 331, 339; *U. S.* v. *California*, 297 US 175, 187, 80 L.Ed. 567, 574; *Case* v. *Bowles*, 327 US 92, 97, 90 L.Ed. 552, 557.

[2] *State of Minn.* v. *U. S.*, 125 F. 2d 636; *U. S.* v. *Montana*, 134 F. 2d 194; *State of California* v. *U. S.*, 91 F. Supp. 722.

In the case of *Georgia* v. *Pennsylvania R. R. Co.*, 324 US 439, 464, 89 L.Ed. 1051, 1067 this Court stated that Clause 2 of Section 2, Article III of the United States Constitution does not grant exclusive jurisdiction to this Court in the cases enumerated by it and that the exercise of that jurisdiction is not mandatory but may be withheld where another suitable forum exists. We quote from the decision in that case:

> "The Court in its discretion has withheld the exercise of its jurisdiction where there has been no want of another suitable forum to which the cause may be remitted in the interest of convenience, efficiency, and justice. *Georgia* v. *Chattanooga*, 264 US 472, 68 L.Ed 796, 44 S.Ct. 369, and *Massachusetts* v. *Missouri*, both supra." [3]

As will be hereinafter shown the interests of convenience, efficiency, and justice would require that this case be tried in a District Court of the United States and in the State of Louisiana.

III. THIS CASE INVOLVES NUMEROUS QUESTIONS OF FACT WHICH SHOULD BE DETERMINED THROUGH APPELLATE PROCEDURE.

Plaintiff's brief, page 15, makes the statement that the United States believes that this case will not require the taking of any evidence, but involves

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[3] See also *Massachusetts* v. *Missouri*, 308 US 1, 19 84 L.Ed. 3, 10; *California* v. *So. Pacific R. R. Co.*, 157 US 229, 261, 39 L.Ed. 683, 695.

only questions of law and matters of which the Court will take judicial notice. We take issue with this statement because the State of Louisiana desires to present and must present numerous questions of fact regarding the location of its boundaries in the Gulf of Mexico and this Court will not take judicial notice of these facts. The proposed action involves questions relating to the historic boundaries of the State of Louisiana, and a determination of these historic boundaries will require reference not only to treaties made with the United States which this Court will judicially notice, but foreign treaties and documents located in the archives of England, France and Spain which this Court will not judicially notice. Louisiana was successively under the domination of France and Spain before it was ceded to the United States by the Treaty of Paris in 1803. This Treaty of cession known as the Louisiana Purchase describes the territory of Louisiana as a territory located within the limits which it possessed in the hands of Spain, and that it had when France possessed it. The State of Louisiana desires to make proof by foreign documents, maps and treaties of the limits of the territory of Louisiana which the Treaty between the United States and France, signed at Paris, April 30, 1803, obligated the United States to incorporate as states of the Union.

Again referring to the case of *Georgia* v. *Penn. R. R. Co.*, (Supra), we call attention to that portion of the decision which states that it would be wholly appropriate that the issues tendered in a case of this kind should be tried in a United States District Court where facilities are better adapted to an extended trial of issues of fact. In this connection we desire to quote the following paragraphs of the opinion: [4]

> "There is some suggestion that the issues tendered by the bill of complaint present questions which a district court is quite competent to decide. It is pointed out that the remedy is one normally pursued in the district courts whose facilities and prescribed judicial duties are better adapted to the extended trial of issues of fact than are those of this Court. And it is said that no reason appears why the present suit may not conveniently proceed in the district court of the proper venue or why the convenience of the parties and witnesses, as well as of the courts, would be better served by a trial before a master appointed by this Court than by a trial in a district court with the customary appellate review. The suggestion is that we deny the motion for leave to file without prejudice to the maintenance of the suit in an appropriate district court. See *Massachusetts* v. *Missouri*, supra (308 US pp. 17, 18, 84 L.ed. 9, 10, 60 S.Ct. 39).

[4] 324 US 465, 89 L.Ed. 1067.

> "There is, however, a reason why we should not follow that procedure here though in other respects we assume it would be wholly appropriate."***

The reason why this Court exercised its original jurisdiction in the foregoing case was that the plaintiff could not have obtained relief in the District Courts because it could not have secured jurisdiction over a number of the defendants, and in any event could not have found all of the defendants in any one of the judicial districts of Georgia. No such problem exists here.

A general statement of Louisiana's claims to submerged lands in the Gulf of Mexico will suffice to show that the taking of evidence is necessary and desirable, not only to prove the width of the marginal belt claimed and owned by the State, but to demonstrate also the landward and seaward location of the lines which delineate this belt. The statements which follow are not intended to furnish a complete and detailed argument on this subject, since the merits of this case are not before the Court at this time. We will only attempt to outline some of the defenses that involve oral evidence and documentary proof of which the Court will not take judicial notice.

Louisiana's case, among other things, involves an interpretation and application of the provisions of the Treaty of Paris between France and the

United States in 1803 whereby the territory of Louisiana was ceded to the United States. To properly interpret this treaty recourse must be had to certain prior treaties between France and Spain; i.e., the Treaty of St. Ildefonso dated September 15, 1800 and the Treaty of Fontainebleu dated November 3, 1762. These treaties and various proclamations and edicts of the Kings of France and Spain furnish evidence concerning the historic boundaries of Louisiana and must be considered in interpreting the Act of Congress creating the Territory of Orleans,[5] and the Acts of Congress admitting the State of Louisiana into the Union.[6]

The Acts of Congress creating the Territory of Orleans, and thereafter forming this territory into the State of Louisiana, were undoubtedly passed for the purpose of carrying out the obligations of the United States assumed in the Treaty of Paris whereby this territory was acquired from France. The first Article of this treaty reads, in part:[7]

> " . . . The French Republic . . . doth hereby cede to the said United States, in the name of the French Republic, for ever and in full sovereignty, the said territory, *with all its*

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[5] 2 Stat. 283 approved March 26, 1804.

[6] 2 Stat. 701, 703 approved April 8, 1812.
2 Stat. 708 approved April 14, 1812.

[7] La. Hist. Quarterly Vol. 2 No. 2, April 1919 page 139-140.

> *rights and appurtenances*, as fully and in the same manner as they had been acquired by the French Republic." (Emphasis supplied.)

This paragraph in the Treaty of Paris is prefaced by a recital taken from the Treaty of St. Ildefonso of September 15, 1800 which is also quoted, in part:

> "His Catholic Majesty (Spain) promises and engages, on his part, to retrocede to the French Republic— . . . . the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it; and such as it should be after the treaties subsequently entered into between Spain and other States."

Article 3 of the Treaty of Paris concerning the cession of the Louisiana territory to the United States, provides:

> "The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion they profess."

The Articles of the Louisiana cession thus obligate the United States to incorporate Louisiana

into the Union according to the principles of the Federal Constitution, and to maintain the inhabitants of Louisiana in their property in the territory *with all its rights and appurtenances* in the same manner as they had been acquired by the French Republic, and to the same extent as when this territory was in the hands of Spain, and that it had when France possessed it. In other words, the United States agreed that the people of Louisiana would be guaranteed in their ownership of the territory within its historic boundaries when the State should be formed and admitted to the Union. It is therefore important to determine the extent of the Louisiana territory and its boundaries when it was successively occupied by Spain and France. We are here concerned, of course, with only that portion of the territory of Louisiana bordering on and in the Gulf of Mexico, which was incorporated into the State of Louisiana. A determination of these historic boundaries is one of the requirements of the Submerged Lands Act. Section 4 of the Act (43 USC 1312) provides:

> ". . . . Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress. May 22, 1953, c. 65, Title II, § 4, 67 Stat. 31."

The purpose of the Submerged Lands Act is thus stated by the Reports of Congressional Committees which approved H.R. 4198:[8]

"PURPOSE OF LEGISLATION

H.R. 4198 consists of three titles. Title I contains the definitions of various terms used in the bill. Title II deals with the rights and claims by the States to the lands and resources beneath navigable waters within their historic boundaries and provides for their development by the States. Title III (See Analysis of Title III, post) deals with the seabed and resources therein of the outer Continental Shelf beyond State boundaries and claim jurisdiction and control for the Unites States. It authorizes leasing by the Secretary of the Interior in accordance with certain specified terms and conditions."

Oral and documentary evidence are required also in order to interpret the Acts of Congress admitting Louisiana into the Union.[9] The Act of April 8, 1812 which delineates the portions of the boundary in dispute here reads in part as follows:

". . . . Beginning at the mouth of the River Sabine; thence by a line to be drawn along the middle of said river, including all islands, to the thirty-second degree of latitude; thence due north to the northernmost part of the

[8] US Code Congressional and Administrative News, 83rd Congress, 1st Sess. 1953 pages 1387 and 1399.

[9] Act of Congress approved April 8, 1812, 2 Stat 701; Act of Congress approved April 14, 1812, 2 Stat 708.

> thirty-third degree of north latitude; thence along the said parallel of latitude to the River Mississippi; thence down the said river to the River Iberville; and from thence along the middle of the said river and Lakes Maurepas and Pontchartrain to the Gulf of Mexico; thence bounded by the said gulf to the place of beginning, including all islands within three leagues of the coast."

The United States contends that the words "bounded by the said Gulf including all islands within three leagues of the Coast" mean that Louisiana's southern boundary is a land boundary and that its dominion stopped at the *shore line* of the Gulf of Mexico. The State of Louisiana insists that its southern boundary is a water boundary that extends at least three leagues seaward from its *coast line*. It was so interpreted by this Court in the case of *Louisiana* v. *Mississippi*, 202 US 1, 50 L.ed. 913, and is so drawn on the diagrams which are made part of the court's decision in that case.

If this Court should now find that the words of the Act describing the limits of Louisiana do not plainly indicate that the seaward boundary of the State extends three leagues from its coast line into the Gulf, then such a description will be implied. Unless otherwise declared by Congress, the title to every species of property owned by a territory passes to a State on its admission into the Union.[10]

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[10] *Brown* v. *Grant*, 116 US 207, 212, 29 L.ed. 598, 600.

The United States does not, and cannot, hold property, as a monarch may, for private or for personal purposes.[11]

The Territory of Orleans, that part of the Louisiana Purchase which became the State of Louisiana, included all submerged lands and waters extending into the Gulf of Mexico that had previously been under the claim and dominion of France and Spain. The United States acquired this territory from France, *in trust*, for the inhabitants of the territory and for the State to be formed out of the property thus ceded by France.[12] This obligation of trust is expressly stipulated in Article 3 of the Treaty of Paris whereby the territory of Louisiana was ceded by France to the United States.[13] In a proper action Louisiana will present documentary proof to show that during the 18th century France and Spain, without protest from other powers, and with the consent of Great Britain, held dominion over the Continental Shelf of Louisiana extending seaward for ten to forty leagues. These facts will be shown by evi-

[11] *Van Brocklin* v. *Anderson*, 117 US 151, 169, 29 L.ed. 845, 851.

[12] *New Orleans* v. *US*, 10 Pet. 662, 737, 9 L.ed. 573, 602; *Pollard* v. *Hagan*, 3 How. 212, 11 L.ed. 566; *Goodtitle* v. *Kibbe*, 9 How. 471, 13 L.ed. 220; *Doe* v. *Beebe*, 13 How. 25, 14 L.ed. 35; *Barney* v. *Keokuk*, 94 US 324, 24 L.ed. 224; *Van Brocklin* v. *Anderson*, 117 US 151, 168, 29 L.ed. 845, 851.

[13] La. Historical Quarterly, Vol. 2, No. 2, April 1919, p. 140.

dence which, in part, will not be judicially noticed by the Court.

As early as 1763 Great Britain, France and Spain, who then possessed the entire North American Continent, agreed that three leagues was a reasonable measure of the width of Territorial waters. A treaty between these three powers signed at Paris on February 10, 1763 stipulated such a limit for Britain's territorial waters off Nova Scotia and New Foundland.[14] The thirteen colonies of the United States thought that three leagues was a reasonable claim to adjoining seas because the Continental Congress instructed its negotiators with Great Britain, prior to the Treaty of Independence of September 3, 1783, to require recognition of American fishing rights in the American Seas "excepting within the distance of three leagues of the shores of the territory remaining to Great Britain at the close of the war."[15]

In 1790 Spain and England agreed to a ten league territorial limit off-shore for Spain's possessions in the South Seas (Gulf of Mexico and Caribbean Sea) and South America, and a like boundary for England's possessions in North America. This latter agreement was in the form of a treaty

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[14] Journal House of Commons 18 March 1763 p. 589.

[15] Journal of the Continental Congress Vols. 13 & 14; Letter of John Quincy Adams to Robert R. Livingston dated Feb. 5, 1783; Riesenfeld, "Protection of Coastal Fisheries", p. 136.

signed at Escurial on October 28, 1790—just ten years before Spain ceded Louisiana to France in the Treaty of St. Ildefonso.[16] So when Spain possessed Louisiana its boundaries extended ten leagues seaward into the Gulf of Mexico and its right to do so was never questioned by any nation. France had then surrendered all her possessions in North America, and neither France nor any other nation protested the establishment of this ten-league boundary in the American seas.

During the time that France possessed Louisiana her boundaries extended beyond ten leagues into the Gulf and included the entire Continental Shelf.

LaSalle in his Proclamation of April 9, 1682 took possession of the country of Louisiana in the name of France with its *Seas*, ports and bays as far as the mouth of the Mississippi in the Gulf of Mexico to the 27th degree of latitude. This parallel of latitude extends some forty leagues seaward into the Gulf. This proclamation was made by Notarial Act and read with great ceremony in the presence of French Troops and a great host of Indian tribes. It reads, in part:[17]

> "In the name of the Most High, Mighty, Invincible and Victorious Prince, Louis the

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[16] Convention between His Britannic Majesty and the King of Spain—Government Pamphlet #1799 Bodleian Library, Oxford, England.

[17] Manuscript of Notarial Proclamation of LaSalle, Dept. of Marine Archives of Paris.

> Great, by the Power of God, King of France and Navarre, 14th of that name, this the 9th day of April, one thousand six hundred and eighty-two, I, by virtue of the commission of his Majesty, which I hold in my hand and which may be seen by all whom it may concern, have taken and do now take possession of this country of Louisiana, the seas, ports, bays, adjacent straits, and all the nations, peoples, provinces, c i t i e s , towns, villages, mines, minerals, fisheries, streams, and rivers, comprised in the extent of said Louisiana,*** as also along the River Colbert, or Mississippi and rivers which discharge therein—as far as its mouth in (dans) the sea or Gulf of Mexico about the 27th degree of the elevation of the North Pole, and also to the mouth of the River of Palms;"**** (Parenthesis added)

LaSalle's claim to the 27th degree of latitude was not made in error. At that time explorers and navigators could make accurate measurements in latitude by the simple use of the quadrant although the determination of longitude was more difficult. LaSalle's claims were recognized by the American Department of State as being "certain, authentic and particular."[18]

Louisiana's historic boundaries therefore were forty leagues into the Gulf "when France possessed it" and at least ten leagues seaward "in the hands of Spain", and the Treaty between France

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[18] Am. State Papers Vol. IV p. 468–70.

and the United States signed at Paris, April 30, 1803 for the Louisiana Purchase obligated the United States to incorporate this territory in the State to be formed.

Although in later years, and for certain purposes only, the United States and Great Britain have championed the claim that territorial waters extend only three miles seaward, they have not consistently followed such a rule. From time to time they have in various respects made exceptions and agreed to a broader extent of territorial seas.[19]

In the treaty between the United States and Spain made on February 22, 1819 and ratified February 19, 1821 (8 Stat. 252) the boundary of the United States in the Gulf of Mexico was described as beginning "at the mouth of the River Sabine, in the sea". Again the United States and Mexico concluded a treaty on January 12, 1828 wherein the dividing limits of the respective countries were declared to be the same as those fixed by the treaty of 1819. (8 Stat. 372).

Later events show that this southwest corner of Louisiana was intended to be located *three leagues in the sea.* This Court in *United States* v. *Texas*, 162 US 1, 40 L.Ed 867 makes reference to these

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[19] *Church* v. *Hubbart*, 2 Cranch 187, 234–5, 2 L.ed. 249, 265; Riesenfeld "Protection of Coastal Fisheries Under International Law" pages 131–136, 260; Colombos, "International Law of the Sea" p. 103.

treaties in connection with the boundaries of Texas, 3 leagues at sea.

The United States Senate, on March 1, 1837, adopted a resolution recognizing the independence of Texas. This resolution was offered by Senator Walker of Mississippi. During the final debate on the resolution immediately prior to its adoption, Senator Walker acquainted the Senate with the boundaries of Texas by reading on the floor of the Senate the boundary act of December 19, 1836.[20]

Article 5 of the Treaty of Guadalupe Hidalgo (1848), which relates to the boundary line between the United States and Mexico, reads in part as follows:

"The boundary line between the two Re-

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[20] In a speech in a secret session of the Senate on the treaty for the annexation of Texas to the United States, on May 21, 1844, Mr. Walker refers to the resolution adopted on March 2, 1837, saying: "As the author of the resolution, before it was adopted, I read to the Senate the boundaries of Texas, as described in her organic law, *claiming it also as the ancient boundaries of Louisiana;* and, with the full knowledge of these facts, the resolution was adopted. In our subsequent treaties, and those of Great Britain, France, and Holland, she is described as 'the republic of Texas' and her independence fully recognized. If, then, as contended by the senator from Missouri, the mere name (the republic of Texas) in a treaty adopts the boundaries described in her organic law, not only have we recognized the Del Norte as the rightful boundary of Texas, but also have Great Britain, France, and Holland." (Emphasis supplied). (Appendix to the Cong. Globe, 28th Cong. 1st Sess. 549.)

> publics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande . . . " [21]

A further acknowledgment by the United States of the three league boundary in the Gulf is found in the Gadsden Treaty, concluded between the United States and Mexico, December 30, 1853.[22] Article I of this treaty provides that:

> " . . . the limits between the two Republics shall be as follows: Beginning in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, as provided in the fifth article of the treaty of Gaudalupe Hidalgo. . . . "

and for the demarcation of this boundary by a joint commission of both countries.

This three league line was actually surveyed again and agreed upon as the international boundary between the United States and Mexico in 1911.

The Submerged Lands Act itself recognizes the fact that a different rule exists with reference to States bordering the Gulf Coast from that which exists in the case of States bordering the Atlantic and Pacific Oceans. It confirms the claims of states on the Gulf coast to a limit of three leagues from the coast whereas it restricts the States on the two

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[21] 9 Stat. 922–23.

[22] Cong. Globe, 33rd Cong. 1st Sess. 1568.

oceans to territorial waters extending only three miles seaward. The Legislative history of the Submerged Lands Act contains the following statement in the Congressional Committee Report:

> "In 1868 Congress approved the Constitution of Florida, in which its boundaries were defined as extending three marine leagues seaward and a like distance into the Gulf of Mexico. Texas' boundary was fixed three marine leagues into the Gulf of Mexico at the time it was admitted to the Union in 1845 by the annexation agreement." [23]

The Committee Report just quoted then proceeds to describe the boundaries which were fixed for other States bordering the Pacific and Atlantic Oceans as extending three miles from the coast.

There are a number of reasons why a different rule for the Gulf of Mexico exists. As stated by Chief Justice Marshall [24]:

> "In different seas and on different coasts, a wider or more contracted range, in which to exercise the vigilance of the government, will be assented to."

The Continental shelf in the Gulf of Mexico is broad and extensive, and the water depth along its coast is quite shallow. In fact, along the greater

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[23] U. S. Code Congressional & Administrative News 83rd Congress First Session 1953 Vol. 2 p. 1516.

[24] *Church* v. *Hubbart*, 2 Cranch 187, 235, 2 L.ed. 249, 265; Colombos "International Law of the Sea" p. 39.

part of Louisiana's coast the three fathom contour extends twelve to fifteen miles seaward. Broad and extensive shoals from four to five fathoms in depth extend even further seaward. Prior to the construction of the Panama Canal only a small portion of the world's commerce traversed its limits. With few exceptions warships and large ocean going vessels have never been able to approach as close as three leagues from shore except at the entrances to its harbors and ports. The fact that the Gulf is almost completely surrounded by land with the West Indies and Bahamas stretching across its relatively narrow entrance, differentiates it from the open seas.

Since the three-league boundary in the Gulf of Mexico has always been recognized by the United States in the Gulf of Mexico around practically the entire perimeter of his land-locked body of water, Louisiana is, under the Constitution, entitled to equality of treatment with the other Gulf Coast States:

In the Texas Tidelands Decision this Court said [25]:

> "The 'equal footing' clause prevents extension of the sovereignty of a State into a domain of political and sovereign power of the United States from which other States

[25] *United States* v. *Texas*, 339 US 707, 719–720, 94 L.ed. 1221, 1228.

have been excluded, just as it prevents a contraction of sovereignty (*Pollard's Lessee* v. *Hagan* (US) 3 How. 212, 11 L.ed. 565, (Supra) which would produce inequality among the States. For equality of States means that they are not 'lesser, greater, or different in dignity or power.' See *Coyle* v. *Smith* 221 US 559, 566, 55 L.Ed. 853, 857, 31 S.Ct. 688."

There is an abundance of evidence in the Congressional Record to show that the United States has always believed that the States own their territorial waters and submerged lands in the sea adjacent to their coasts, even without any express grant, under the concept of state sovereignty and the "equal footing" doctrine.[26] This Court in the California Tidelands Case affirmed the fact that the Courts had been of that same opinion, at least since *Pollard* v. *Hagan* [27] was decided in 1844. In the California Case your Honors said: [28]

"As previously stated this Court has fol-

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[26] A majority of the members of Congress in 1946 and 1948 expressed the same understanding. See the wording of H. J. Res. 225, 79th Cong., 2nd Sess. (1946); 92 Cong. Rec. 1942, 10316 (1946) confirming titles to the States, which was vetoed by the President. 92 Cong. Rec. 10660 (1946). Also see S. 1545, 81st Cong., authored by 31 Senators for the same purpose and containing the same interpretation; and H.R. 5992, 80th Cong., which passed the House by a vote of 257 to 29. 94 Cong. Rec. 5155 (1948).

[27] *Pollard* v. *Hagan*, 3 How. 212, 11 L.ed. 565.

[28] *U.S.* v. *California*, 332 US 19, 36, 91 L.ed. 1889, 1898.

> lowed and reasserted the basic doctrine of the Pollard case many times. And in doing so it has used language strong enough to indicate that the Court then believed that states not only owned tidelands and soil under navigable inland waters, but also owned soils under all navigable waters within their territorial jurisdiction, whether inland or not . . . "

As a matter of law, a recognition of Louisiana's title to the three-league belt should be implied. As a matter of fact, it can be proven as a result of custom and usage over a long period of time.[29]

Louisiana since her admission into the Union has at all times, and with the acquiescence of the United States, exercised governmental and proprietary rights in its Continental shelf. Evidence on this subject will be offered by the State in the form of numerous maps, charts, records of the State Land Office, State Department of Conservation, State Mineral Board, and by the records of other State offices, and by the oral testimony of witnesses. These are facts which require a hearing before a trial court where pretrial procedures, and other trial procedures, will facilitate an orderly hearing and a full presentation of facts.

There are many equities involved in this con-

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[29] *U.S.* v. *Texas*, 162 US 1, 61, 40 L.ed. 867, 892; *Mass.* v. *N. Y.*, 271 US 65, 95–6, 70 L.ed. 838, 848–851; *Martin's Lessee* v. *Waddell*, 16 Pet. 367, 410–417, 10 L.ed. 997.

troversy, and of course the United States is subject to the same rules of justice and equity which are applicable to other litigants.[30] In this connection the Congressional Committee Report, recommending passage of the Submerged Lands Act, says:[31]

> "The repeated assertions by our highest Court for a period of more than a century of the doctrine of State ownership of all navigable waters, whether inland or not, and the universal belief that such was the settled law, have for all practical purposes established a principle which the committee believes should as a matter of policy be recognized and confirmed by Congress as a rule of property law.
>
> The evidence shows that the States have in good faith always treated these lands as their property in their sovereign capacities; that the States and their grantees have invested large sums of money in such lands; that the states have received, and anticipate receiving large income from the use thereof, and from taxes thereon; that the bonded indebtedness,

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[30] *Guaranty Trust Co.* v. *U.S.*, 304 US 126, 82 L.ed. 1224 and cases cited; *Richardson* v. *Fajardo Sugar Co.*, 241 US 44, 60 L.ed. 879; *People of Porto Rico* v. *Ramos*, 232 US 627, 58 L.ed. 763; *Clark* v. *Barnard*, 108 US 436, 447, 448, 27 L.ed. 780; *U. S.* v. *Nat'l City Bank*, 83 F.2d 236, 238, Cert. Den. 299 US 563, 81 L.ed. 414; *Jones* v. *Watts*, 142 F.2d 575.

[31] U. S. Code Congressional and Administrative News, 83rd Congress, 1st Sess. 1953 Vol. 2 p. 1429-30.

school funds, and tax structures of several States are largely dependent upon State ownership of these lands; and that the legislative, executive, and judicial branches of the Federal Government have always considered and acted upon the belief that these lands were the properties of the sovereign States.

If these same facts were involved in a dispute between private individuals, an equitable title to the lands would result in favor of the person in possession. The Court in the California case states, as a matter of law, that the Federal Government—

'is not to be deprived of those interests by the ordinary court rules designed particularly for private disputes over individually owned pieces of property; ***'

That effect of this ruling of the Court is to place the State of California in the same legal position as an individual, thereby depriving it of its status as a sovereign. It should be noted that the case of *U. S.* v. *California* was a controversy between two sovereigns, namely, the United States on the one hand and the State of California on the other, both of which occupied equal dignity as sovereigns. The sovereign rights enjoyed by the United States were in the first instance derived from the States and the sovereign powers of the United States can rise no higher or have any greater effect than that which was delegated to the Central Government by the Constitution. The committee believes that, as a matter of policy

> in this instance, the same equitable principles and high standards that apply between individuals, should be applied by Congress as between the National Government and the sovereign States. (See *Indiana* v. *Kentucky*, 136 US 479, 500, 10 S.Ct. 1051 (1890); *U.S.* v. *Texas*, 162 US 1, 61, 16 S.Ct. 725 (1896); *New Mexico* v. *Texas*, 275 US 279, 48 S.Ct. 126 (1927).)"

The equities involved here relate to the long continued exercise of jurisdiction and ownership by Louisiana over the waters and the submerged lands in the Gulf, the recognition by the various departments of the Federal Government of Louisiana's ownership and title, and the acquiescence not only of the United States but of other nations in this dominion and title of the State. The acts of United States administrative and executive officials in recognizing Louisiana's title is certainly evidence to explain and interpret the original intent of the Federal and State governments in describing Louisiana's boundaries in the Act of Congress incorporating the Territory of Orleans into the State of Louisiana.[32] Louisiana is entitled to offer evidence, oral and documentary on this subject.

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[32] *Mass.* v. *N. Y.*, 271 US 65, 95, 96, 70 L.ed. 838, 848–851; *Martin's Lessee* v. *Waddell*, 16 Pet. 410, 10 L.ed. 1012; *Handly* v. *Anthony*, 5 Wheat. 374, 383, 384, 5 L.ed. 113, 115.

Paragraph IX of the Government's complaint states that the fundamental issues involved in its controversy with Louisiana "involves inquiry into and application of the foreign policy of the United States in a mater of peculiar importance and delicacy" over which the original jurisdiction of this Court is most appropriate. This is wishful thinking on the part of counsel for plaintiff in a supreme effort to dress up the Government's appearance and evade an essential issue. As a matter of fact, Plaintiff appears here not to champion or protect or defend foreign policy, but to seek unjust enrichment, through personal and material proprietorship, at the expense of one of the sovereign states. The United States is claiming the ownership of valuable oil lands belonging to Louisiana and discovered through her own initiative and industry,—not to protect interstate and foreign commerce—not to defend Louisiana or the nation from a foreign foe—nor for any other governmental purpose. It merely seeks to establish a private claim of ownership in lands so that it may go into the business of selling leases and mineral rights and securing royalties on oil, gas, and other minerals. It possesses here no greater stature than any other private land owner or oil company. The mere fact that the United States may be called upon in time of war to defend and protect Louisiana's oil and gas wells in its territorial waters and submerged lands adds nothing to the government's

rights, purposes, or obligations now. In time of war the Federal Government must defend the harbors and port facilities of New York, New Orleans and San Francisco and it must defend and protect the gold and silver mines of Colorado, the oil fields of Oklahoma, Illinois, Texas and California, the lead mines of Missouri and the coal mines of Pennsylvania and West Virginia. But the sovereign obligation to defend the properties of the States and people confers no title of ownership of those properties in the United States.

The statement in Article IX of the proffered complaint that the fundamental question at issue "involves inquiry into and application of the foreign policy of the United States in a matter of peculiar importance and delicacy" can only be taken as a frivolous argument. What repercussions could be expected on the International scene over Louisiana's claim to a three-league boundary in the Gulf, when the claim of the United States to the entire continental shelf has not been protested by any nation since the claim was asserted by Proclamation of President Truman on September 28, 1945?[33] The people of Louisiana have been exercising an exclusive right to fish, trawl, and

[33] 10 F.R. 12303–4 US Code Cong. Service 1945 p. 1199, 1200 Executive Order #9633, 3CFR, 1945 Supp., accompanying this proclamation states that it shall not prejudice any issues between the United States and the several states, relating to the ownership or control of the subsoil and seabed on the Continental Shelf.

seine the waters of the Gulf off shore since the State was admitted to the Union, and the State has by Legislative Act, at least as early as 1870,[34] forbade aliens to fish or to remove oysters and shells from her territorial waters in the Gulf on penalty of fine and imprisonment. That was 86 years ago, but no international complications have resulted therefrom. Since 1915 the Legislature of Louisiana has authorized the leasing of its public lands, including lands underlying the Gulf of Mexico, for the exploitation of petroleum, gas and other mineral deposits.[35] No delicate question of national policy has yet arisen on this subject. Numerous oil and gas wells have already been drilled by lessees of the State up to and exceeding three leagues off shore without protest or controversy except the present one between the State and the Federal Government.

Furthermore, pursuant to the Outer Continental Shelf Lands Act of Congress,[36] the Federal Government has for several years been leasing lands far out to sea on Louisiana's continental shelf, and drilling operations have been, and are being conducted there. Why then should plaintiff say that Louisiana's exercise of proprietorship and domin-

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[34] Act No. 18 of 1870 of the Acts of Louisiana.

[35] Complaint, Art. IV, *United States vs. La.* #12 original U.S. Sup. Ct. Oct. Term 1949. Act 30 of 1912 of the Acts of La.

[36] Act of August 7, 1953, 67 Stat 462, 43 USC 1331.

ion closer to the shores raises delicate questions of foreign policy? The argument is inconsistent, and is without merit. Obviously no question of foreign policy is involved so as to necessitate the exercise of original jurisdiction by this Court.

If there be any principle of sovereignty involved in the Federal Government's claims let it be noted that Louisiana is also sovereign within its boundaries on land and sea.

The boundaries between the respective power and immunity of State and National Government are drawn so as to reserve to each government, within its own sphere, the freedom to carry on those affairs committed to it by the Constitution without undue interference by the other.[37] Powers of the general Government and of the State, although both exist and are exercised within the same territorial limits, are yet separate and distinct so long as the present dual form of government endures. The States are in their sphere as independent of the general Government as that Government within its sphere is independent of the states.[38]

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[37] *Educational Films Corp.* v. *Ward*, 282 US 379, 75 L.ed. 400; *Colorado* v. *Symes*, 286 US 510, 76 L.ed. 1253; *Beal* v. *Missouri Pac. R. R. Co.*, 312 US 45, 85 L.ed. 577.

[38] *Brush* v. *Commissioner of Internal Revenue*, 300 US 352, 81 L.ed. 691; *Buffington* v. *Day*, 11 *Wall.* 113, 20 L.ed. 122; *White* v. *Hart*, 13 Wall 646, 20 L.ed. 685; *Ableman* v. *Booth*, 21 How. 506, 16 L.ed. 169; *Dodge* v. *Woolsey*, 18 How. 331, 15 L.ed. 401; *McCulloch* v. *Maryland*, 4 Wheat. 316, 4 L.ed. 579.

Although defenses of laches, estoppel and prescription may not be urged by individuals against a state or the Federal Government because the sovereign is immune from such a plea, the rule is different where two sovereign powers are involved. In *Phillips* v. *Payne*, 92 US 130, 132, 23 L.Ed. 649 this Court said:

> "The law of prescription applies to nations with the same effect as between individuals."[39]

Estoppel, like prescription, resting on considerations of fairness and justice, has been applied between sovereign nations. See Lauterpacht, Private Law Sources and Analogies of International Law (London, 1927) 203-207, citing seven important international arbitration cases where estoppel was made the basis of the award.

In the case of *Maryland* v. *West Virginia*, 217 U.S. 1, 42, 54 L.Ed. 645, 658 this Court said [40]:

> "As said by this court in the recent case of *Indiana* v. *Kentucky*, 136 U.S. 479, 510, 34 L.ed. 329, 332, 10 Sup. Ct. Rep. 1051, 'it is a principle of public law, universally recog-

[39] See also: *Arkansas* v. *Tenn.*, 310 US 563, 570, 84 L.ed. 1362, 1366–7; *New Mexico* v. *Texas*, 275 US 279, 298–9, 72 L.ed. 280; *U. S.* v. *Chaves*, 159 US 452, 464, 40 L.ed. 215, 220; *Guaranty Trust* v. *U.S.*, 304 US 126, 134, 82 L.ed. 1224, 1229.

[40] See also: *Rhode Island* v. *Mass.*, 4 How. 591, 639, 11 L.ed. 1116, 1137; *Louisiana* v. *Miss.*, 202 US 1, 53, 50 L.ed. 913, 932; *Indiana* v. *Kentucky*, 136 US 479, 510, 34 L.ed. 329, 332.

> nized, that long acquiescence in the possession of territory, and in the exercise of dominion and sovereignty over it, is conclusive of the nation's title and rightful authority'."

It will thus be seen that the law of nations on the subject of prescription, laches and estoppel has been applied by the Court to the sovereign States of the United States. Louisiana is entitled to urge these defenses here and to give evidence on these matters.

IV. JUSTICE AND CONVENIENCE REQUIRE TRIAL IN FEDERAL COURT IN LOUISIANA.

As set forth in Louisiana's opposition to motion for leave to file complaint, the evidence which it proposes to introduce in the event of a trial of its controversy with the United States consists of the testimony of witnesses and the introduction of evidence of numerous maps, charts, diagrams, foreign treaties and documents which this Court will not judicially notice. The State will also prepare and have witnesses to testify concerning the records of the State Land Office, the Department of Conservation, the State Mineral Board and the records of other State offices. It would be a matter of great expense and inconvenience if the State of Louisiana were obliged to transport its witnesses, documents and other exhibits to Washington, D.C. The State of Louisiana is therefore entitled to insist upon a hearing of the issues involved in a Dis-

trict Court of the United States having jurisdiction in the State of Louisiana and located therein.

As a general rule an action must be brought in the State and in the county or parish where the defendant resides, and this principle of law is ordinarily embodied in statutes which fix the venue of the action (92 CJS 777 and cases cited). The privilege conferred on a defendant of being sued at his domicile is a valuable and substantial right and those exceptions which have been made to the rule grow out of some special need for a relaxation of this ancient requirement. Ordinarily a defendant should not be put to the trouble and expense of transporting his witnesses and exhibits to some distant forum.

One of the purposes of amending Section 1251 of Title 28 of the United States Code by the Act of June 25, 1948 was to permit concurrent jurisdiction in the District Courts of the United States in controversies between the United States and a State so as to provide a more convenient forum for the trial of cases of this kind. The opinion of this Court in *Georgia* v. *Pennsylvania R. R. Company*,[41] recognized the convenience of the parties and witnesses as one of the reasons why the Supreme Court should not exercise original jurisdiction in certain cases where a district court would be a more appropriate forum.

[41] 324 US 465, 89 L.ed. 1067.

The complaint and the brief in support of plaintiff's motion for leave to file it both indicate that the United States intends to rely on questions of law and does not intend to offer oral or documentary evidence. The Court therefore need not consider the convenience of plaintiff as any factor affecting the venue of this action.

V. CONTROVERSIES SHOULD NOT BE DECIDED IN PIECEMEAL FASHION.

Plaintiff's motion and complaint in this case attempts in piecemeal fashion to dispose of the controversies between the United States and the State of Louisiana over the submerged lands and resources within the boundaries of Louisiana.

The complaint asks this Court to determine only whether the outer boundary of Louisiana recognized by the Submerged Lands Act, is located three miles or three leagues seaward from Louisiana's coast line. That is asking this Court to do a vain and useless thing.

The locality of the area belonging to Louisiana cannot be fixed without determining both lines, which constitute respectively the inner and the outer boundaries of the marginal belt. The judicial action sought by the plaintiff would waste the time of this Court in a partial and piecemeal and wholly inconclusive determination, that would leave still wholly controversial and unsettled the major essential factor in the location of the area

in question. A determination either that the marginal belt extends three leagues from the coast line, or that such area extends three miles from the coast line, does not locate even the outer boundary of the area in the absence of a determination of the location of the coast line itself.

Act 33 of 1954 was passed by the Legislature of Louisiana to redefine and delineate its coast line as the line of demarcation between the inland waters and the open sea as fixed by the United States pursuant to the Act of Congress of February 19, 1895, 28 Stat. 672, 33 USC 151. This coast line meets the definition contained in Title 43 of the United States Code, Section 1301, 67 Stat. 29 wherein the term "coast line" is defined as the line of ordinary low water along that portion of the coast which is in direct contact with the open sea "and the line marking the seaward limit of inland waters." However, the Federal Government takes the position that the coast line of Louisiana follows the shore of the Gulf and the various indentations that mark its mainland. If this controversy were to be solved on the basis of the Federal Government's contention, then considerable testimony must be produced to show just where the shores of Louisiana were at the time of its admission into the Union. This is so because the same section of the Code defines the term "boundaries" to mean the seaward boundaries of

the State "as they existed at the time such State became a member of the Union."

Considerable changes have occurred in the shore line of Louisiana since the year 1812. In some places the shore line has receded several miles whereas in others it has been extended by accretion a substantial distance seaward. Louisiana's coast is highly irregular. The gulfward extremities of such coast consist of innumerable sand bars, shoals, reefs, islands, peninsulas, bayous, bays and marsh. It is difficult, if not impossible, to determine on mere sight just where the open Gulf begins. Winds, tides and other physical forces have brought and are bringing about frequent changes in these areas of shallow water. In any case a determination either of the width or the location of the coast line, or both, will require the taking of evidence and the introduction of numerous maps, charts, official and historical documents. It will also require the testimony of surveyors, historians, and other experts.

This Court has already signed an order to permit the testimony of Dr. James P. Morgan to be taken in pursuance of Louisiana's petition, *In the matter of the Perpetuation of the Testimony of Dr. James P. Morgan*, No. 14, Original, October Term, 1955. Such testimony has been taken and is on file in the office of the Clerk of this Court. But Dr. Morgan's testimony covers only one of the many issues in-

volved in the boundary dispute between the United States and the State of Louisiana. Louisiana has other witnesses whose testimony is indispensable to a proper disposition of the controversy aforesaid. These matters cannot be properly presented to the Court except through a trial in a District Court of the United States located and having jurisdiction in the State of Louisiana.

Plaintiff's brief indicates an urgent need for an adjudication concerning the width of Louisiana's marginal belt and the reason for this, according to plaintiff, is the need for exploration and development of the mineral resources of the area. Such a purpose cannot be accomplished by a piecemeal decision of the controversy.

For the reasons set forth herein above the Court should deny plaintiff's motion for leave to file its complaint.

Respectfully submitted,

**FRED S. LeBLANC,**
*Attorney General*
*State of Louisiana*
*2201 State Capitol*
*Baton Rouge, La.*

**JOHN L. MADDEN,**
*Assistant Attorney General*
*State of Louisiana*
*2201 State Capitol*
*Baton Rouge, La.*

**BAILEY WALSH,**
*Special Assistant*
*Attorney General*
*State of Louisiana*
*1346 Connecticut Ave., N.W.*
*Washington, D. C.*

**W. SCOTT WILKINSON**
**L. H. PEREZ**
**GROVE STAFFORD**
*Of Counsel*

PROOF OF SERVICE

I,....., one of the attorneys for the State of Louisiana, defendant herein, and a member of the Bar of the Supreme Court of the United States, certify that on the.....day of....., 1956, I served copies of the foregoing Opposition to Plaintiff's Motion For Leave To File Complaint and Brief in support thereof, by leaving copies thereof at the offices of the Attorney General and of the Solicitor General of the United States, respectively, in the Department of Justice Building, Washington, D. C.

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